

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1420 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MUNIRKHAN ASHRAFKHAN BELIM BROTHER OF DETENU AIYUBBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR NM KAPADIA for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 2nd February, 1999 made against one Aiyubhai Ashrafbhai Belim, the brother of the petitioner, by the District Magistrate, Mehsana, under

the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The detenu is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of public order. As many as three offences punishable under the Bombay Prohibition Act have been registered against the detenu since 21st June, 1997 and are pending trial before the concerned Court. Besides, two individuals, on assurance of anonymity, have given statements in respect of the anti-social activities of the detenu and its adverse effect on the public order. It is contended that in each of the offences registered against the detenu, the detenu has been arrested and released on bail at the relevant time. With respect to offence registered on 21st June, 1997, the detenu was released on bail under order dated 22nd June, 1997. The said order has been relied upon by the detaining authority and has also been supplied to the detenu alongwith the grounds of detention. However, the said order being in English, the detenu was unable to read or understand the contents thereof. The detenu has thus been furnished a document in English, a language not known to the detenu, and the detenu's right to make an effective representation has thus been infringed. Besides, while recording his subjective satisfaction, the detaining authority has referred to several prohibition offences registered against the detenu before the ones referred to in the grounds of detention. No material pertaining to the said prohibition offences has been furnished to the detenu. Thus, the detaining authority has relied upon extraneous materials or in other words, has not furnished all the materials relied upon by him. In either case, the subjective satisfaction recorded by the detaining authority stands vitiated.

4. The aforesaid contentions raised in the petition are not controverted. The subjective satisfaction recorded by the detaining authority having thus been vitiated, the continued detention of the detenu is null and void.

5. For the aforesaid reasons, this petition is allowed. The order dated 2nd February, 1999; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The detenu-Aiyubbhai Ashrafbhai Belim, unless he is required to be detained in some other case, be released forthwith.

Prakash*